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June 2, 2006

HAND DELIVER

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, Massachusetts 02110

Re: The Berkshire Gas Company - D.T.E. 06-27

Dear Secretary Cottrell:

Enclosed please find a copy of the Initial Brief of The Berkshire Gas Company for filing in the above-referenced proceeding. This brief is also being submitted electronically.

Please call me if you require further assistance with respect to this matter.

Thank you for your consideration.

Very truly yours,

BROWN RUDNICK BERLACK ISRAELS LLP

By: James M. Avery
James M. Avery

JMA/cdw
Enclosure
cc: John J. Keene, Jr., Esq., Hearing Officer (w/4 enc via hand delivery)
Rebecca S. Hanson, Esq., Assistant General Counsel (via electronic mail)
Andreas Thanos, Assistant Director, Gas Division (via electronic mail)
Jamie Tosches, Esq., Assistant Attorney General (w/4 enc via hand delivery)
Pat Kelley, Analyst (w/enc via hand delivery)
Karen L. Zink, President, COO and Treasurer (w/enc)
Jennifer M. Boucher, Manager - Regulatory Economics (w/enc)

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

The Berkshire Gas Company	)	D.T.E. 06-27

INITIAL BRIEF OF THE BERKSHIRE GAS COMPANY

I. INTRODUCTION

On February 28, 2006, The Berkshire Gas Company ("Berkshire" or the "Company") filed a Petition for Approval of Gas Sales Agreement Between The Berkshire Gas Company and Coral Energy Resources, L.P. ("Coral") with the Department of Telecommunications and Energy (the "Department"). Berkshire's Petition sought approval of three integrated agreements: (i) a North American Energy Standards Board (NAESB) Base Contract dated as of November 1, 2005 ("Base Contract"); (ii) a Transaction Confirmation dated as of December 7, 2005 ("Confirmation"); and (iii) a Letter Agreement dated as of January 27, 2006 ("Letter Agreement"). The Base Contract, Confirmation and Letter Agreement are referred to collectively as the "Sales Agreement." The Sales Agreement is for a term of seven (7) years and provides that Berkshire shall be entitled to firm delivered gas supply at its Pittsfield citygate in the amount of 7,500 MMBtus per day for the terms December 1, 2005 through February 28, 2006, December 1, 2006 through February 28, 2007, and December 1, 2007 through February 29, 2008. For the remaining terms of December 1, 2008 through February 28, 2009, December 1, 2009 through February 28, 2010, December 1, 2010 through February 28, 2011 and December 1, 2011 through February 29, 2012, the volume entitlement shall be 5,000 MMBtus per day. In addition, the Company submitted the prepared testimony and schedules of Jennifer M. Boucher, Manager – Regulatory Economics, in support of the Petition. Finally, the Company filed a Motion for Protective Treatment of Confidential Information for a portion of the Sales Agreement as well as materials relating to the competitive solicitation that resulted in the execution of the Sales Agreement.[1]

Pursuant to its duly published notice, the Department conducted a public hearing at its offices on March 28, 2006. On March 22, 2006 the Attorney General of the Commonwealth (the "Attorney General") filed notice of intervention as of right pursuant to G.L. c. 12, §11E.

At the evidentiary hearing on May 23, 2006, the Company presented the testimony of Ms. Boucher wherein she adopted the prepared testimony submitted with the Petition and addressed questions from the Department staff and the Attorney General. In addition to the sworn testimony accepted at the hearing, the evidentiary record to date consists of approximately 95 exhibits, including the Company's initial filing and supporting documentation as well as the Company's responses to the Information Requests of the Department staff and the Attorney General. On May 31, 2006, the Company also responded to two record requests issued during the evidentiary hearing by the Attorney General. This evidentiary record demonstrates that the Sales Agreement is consistent with the public interest in that the Coral supply resource proposed to be added to the resource portfolio is consistent with the Company's portfolio objectives and compares favorably to the range of alternative options reasonably available to the Company and its customers.

The Attorney General has indicated his intention during the evidentiary hearing to raise issues that the Company submits are beyond the proper scope of this proceeding, namely the Company's actions with respect to a no longer available peak season supply resource. Preliminary argument on this question was presented at the evidentiary hearing. The Hearing Officer also directed the Company to file a written motion with respect to the proper scope of this proceeding by June 9, 2006. The Attorney General's response to this motion and summary of his claims with respect to the Company's actions is due to be filed by June 20, 2006.

[1] A Supplemental Motion for Protective Treatment of Confidential Information was filed on May 22, 2006 with respect to certain information requests of the Attorney General and the Company's responses that relate to matters involving a previously available gas supply resource.

The Hearing Officer required that Initial Briefs in this proceeding with respect to the Department's standard pursuant to G.L. c. 164, §94A be filed by June 2, 2006 and that Reply Briefs be submitted by June 9, 2006. The Company's Initial Brief is submitted in accordance with the procedural schedule established by the Hearing Officer.

II. DESCRIPTION OF THE SALES AGREEMENT AND RELATED SOLICITATION PROCESS.

The Sales Agreement was negotiated by the Company in response to the unavailability of another resource, namely certain peak season purchase rights pursuant to an Amended Fuel Purchase Agreement ("AFPA"; Exh. AG 1-19) between Berkshire and the operator of a cogeneration plant located in Pittsfield, Massachusetts. The AFPA had enabled Berkshire to purchase up to 7,500 Dth/d per day of the plant's gas supply under certain conditions. Exh. BG-1, p. 5. The Company's ultimate conclusion as to the unavailability of the AFPA resource was, in fact, accepted by the Department in approving the Company's recent petition for approval of a contract for gas transportation capacity as part of Tennessee Gas Pipeline Company's ("Tennessee") so-called ConneXion Project. See The Berkshire Gas Company, D.T.E. 05-58, p. 7 (2006) (The Department found that the ConneXion Project was "the least-cost option to replace the capacity no longer available through the AFPA."). See also Exh. AG 2-8; Tr. 10. The Sales Agreement, together with the Company's participation in the ConneXion Project, replace (and somewhat supplement) the peak season purchase rights formerly available pursuant to the AFPA. Tr. 11; Exh. DTE 1-1.

In the fall of 2004, Berkshire became aware that the AFPA resource would no longer be available, in part, because the plant operator was making a permanent release of its gas transportation capacity on the Tennessee system. Exh. BG-1, p. 7; Tr. 10; Exh. AG 1-22. Berkshire first aggressively pursued shorter term alternatives in order to replace this resource for the then upcoming 2004/2005 winter. Berkshire took several immediate actions. Exh. BG-1, pp. 7-9. First, Berkshire changed its operating practices with respect to its liquid propane plants employed for peaking services and expanded its contractual propane purchasing rights. Exh. BG-1, p. 7. The Company also evaluated a number of other short-term resource options before electing to secure additional liquefied natural gas purchase rights. Exh. AG 2-23. The Department was advised of these actions in a report submitted by the Company and such measures were also described in detail in the Company's Forecast and Supply Plan (the "Supply Plan") filed in January 2005 and under review in D.T.E. 05-7. Tr. 10; Exh. DTE 1-6; Exh. DTE 1-1.

Once these arrangements were in place for that impending heating season, the Company continued to evaluate alternatives for the longer term particularly once it was confirmed that the plant operator's Tennessee capacity had been permanently released. Exh. BG-1, p. 9; Exh. AG 1-22; Exh. AG 2-8. Berkshire was aware that in late 2004 Tennessee was reoffering ConneXion Project capacity with limited rights for Berkshire to terminate its commitment. While Berkshire recognized the obvious value of the ConneXion Project, these limited termination rights would enable Berkshire to conduct an appropriate and detailed analysis of such resource and ensure that such an approach was the best available alternative to meet its resource need. Exh. BG-1, pp. 9-10. Berkshire also recognized that it was limited in the potential level of its commitment to the ConneXion Project due to constraints at the Company's gate stations. Exh. DTE 1-7; Tr. 11. Given the obvious benefits of the ConneXion Project and Berkshire's then current need for a replacement resource, Berkshire agreed to a commitment for its MDTQ of 4,000 Dth/d and, accordingly, on January 21, 2005 Berkshire and Tennessee executed a Precedent Agreement for such volumes with Tennessee. Exh. BG-1, p. 10. The Company then went on to perform the market solicitation and analyses described below which resulted in its petition to the Department to approve its ConneXion Project contract. Id. at 10-11. This contract was approved in Berkshire Gas, D.T.E. 05-58 on February 28, 2006. This same analysis was also relied upon to identify the best additional resource to meet the

Company's identified resource need that eventually resulted in the negotiation of the Sales Agreement.

The Company performed a comprehensive evaluation of available, alternative resources, including the ConneXion Project. First, on February 4, 2005, Berkshire solicited interest from a number of parties including gas suppliers and local distribution companies with respect to providing up to a 35-day service because the AFPA primarily provided benefits during peak periods. Exh. BG-1, pp. 9-10; Exh. BG-5. After receiving some indications of interest, Berkshire determined that it would be appropriate to expand the scope of its analysis and consider more seasonal service that could meet peak requirements but that might also secure other benefits. Therefore, on February 22, 2005 a follow-up solicitation of interest in providing a 90-day or 151-day service was sent to these same parties. Exh. BG-1, p. 10; Exh. BG-6; Tr. 12. Subsequently, on March 7, 2005 a formal request for proposal ("RFP") was issued to the seven parties that had expressed an interest in response to the Company's earlier solicitations. Exh. BG-1, p. 10; Exh. BG-8. This RFP was essentially identical to prior forms employed by the Company and approved by the Department. Four responses to the RFP were received with a total of 11 specific proposals. Exh. BG-1, p. 10; Exh. BG-9. Coral was one of the respondents. Id. Each bid as well as the ConneXion Project were then analyzed in detail.

The Company's analysis demonstrated that the ConneXion Project was the superior alternative in terms of price and non-price factors. Exh. BG-10; Tr. 12; Exh. DTE 1-9. As noted, the ConneXion Project could not address the Company's entire need. The Company's analysis determined that the Sales Agreement with Coral was the resource alternative that would best meet the remainder of the Company's reliability requirements.

The Sales Agreement provides for a firm gas supply with a maximum daily quantity ("MDQ") of 7,500 MMBtu per day during the winter months (December through February) through 2008. Thereafter, the MDQ is reduced to 5,000 MMBtu per day through the winter of 2011/2012. Exh. BG-1, p. 3; Exh. BG-3. It is expected that this change in the MDQ will coincide with the in-service date of the Tennessee ConneXion Project. Exh. BG-1, p. 9; Tr. 13; Exh. AG 1-8. The Sales Agreement provided a necessary service at a competitive price. Exh. DTE 1-9; Exh. BG-10; RR-AG-1. The Sales Agreement also includes substantial reliability, flexibility, diversity, and stability benefits. Exh. BG-1, pp. 9-12; Exh. AG 1-11; Tr. 13. First, Coral maintains firm primary delivery rights to the Company's Bousquet Meter Station in Pittsfield, Massachusetts. Exh. BG-1, p. 10. This feature, which was only reflected in the Coral proposal, is essential to the provision of reliable service. Tr. 13; Exh. DTE 1-2 (The Company noted that other entities were not able to secure non-primary firm delivery on the Northampton lateral during this past winter.). The addition of an additional supply from Canadian suppliers also added a measure of diversity to the Company's resource portfolio. Exh. BG-1, p. 10; Exh. AG 1-11; Tr. 25, 30. Further, several features were negotiated that enhance the flexibility of the Sales Agreement, including a "sellback" option that permits Berkshire to sell unneeded volumes pursuant to the Sales Agreement back to Coral at agreed upon prices. Exh. BG-4; Exh. BG-1, p. 12; Exh. AG 1-1; Tr. 13, 25, 28. Further, Berkshire negotiated an obligation on the part of Coral to seek authority to assign its right of first refusal ("ROFR") with respect to certain underlying Tennessee capacity at the end of the term of the Sales Agreement. Exh. BG-1, pp. 11-12; Exh. DTE 1-11; Tr. 13. Further, if the assignment of the ROFR is not completed, Berkshire is entitled to a discount on gas supplied by Coral pursuant to the Sales Agreement. Id. Finally, a measure of stability is added because the Company's gas supply resources will have staggered terms. Exh. BG-1, p. 12. In sum, the Company concluded that Coral was the best available alternative in terms of both price and non-price factors.

Ms. Boucher's testimony demonstrated that the Sales Agreement is consistent with the public interest because it is consistent with the portfolio objectives established in the Company's most recent Supply Plan filed in docket D.T.E. 05-7 and also as established in a "recent review" of a contract under G.L. c. 164, §94A (see Berkshire Gas, D.T.E. 05-58). Exh. DTE 1-1. In addition, Ms. Boucher's testimony demonstrated that the Sales Agreement compares favorably to the range of alternative options reasonably available to the Company and its customers.

III. STANDARD OF REVIEW

In evaluating a gas utility's resource options for the acquisition of natural gas resources, the Department examines whether the acquisition of the resource is consistent with the public interest. Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). See also, Berkshire Gas, D.T.E. 05-58 (2006). In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, a company must show that the acquisition: (1) is consistent with the company's portfolio objectives; and (2) compares favorably to the range of alternative options reasonably available to the company and its customers, including releasing capacity to customers migrating to transportation, at the time of the acquisition or contract renegotiations. Id.

In establishing that a resource is consistent with a company's portfolio objectives, the company may refer to portfolio objectives established in a recently approved resource plan or in a recent review of supply contracts under G.L. c. 164, §94A, or may describe its objectives in the filing accompanying the proposed resource. Id. In comparing the proposed resource acquisition to current market offerings, the Department examines relevant price and non-price attributes of each contract to ensure a contribution to the strength of the overall supply portfolio. Id. at 28. As part of the review of relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broad range of capacity, storage, and commodity options that were available to the company at the time of the acquisition, as well as with those opportunities that were available to other companies in the region. Id. In addition, the Department determines whether the acquisition satisfies the LDCs' non-price objectives, including, but not limited to, flexibility of nominations and reliability and diversity of supplies. Id. at 29.

IV. DISCUSSION

A. Request for Proposals

In late 2004, Berkshire recognized the need to develop and implement an appropriate process for securing adequate long-term replacement resources due to the loss of availability of the gas purchase rights available pursuant to the AFPA. Berkshire evaluated all available resource options, including peaking and seasonal services as well as additional transportation resources. Exh. BG-1, pp. 9-11; Tr. 11-13; Exh. DTE 1-17. Berkshire evaluated the updated open season for the ConneXion Project and recognized that this option was the optimal resource for adding primary firm transportation capacity because of the cost and non-cost benefits and the limited opportunities for similar resources as a result of Berkshire's geographic location. Berkshire Gas, D.T.E. 05-58, p.7. Berkshire next determined that it would be appropriate to compare this resource to alternatives that might be developed pursuant to a competitive solicitation, particularly since it was unlikely that the ConneXion Project alone could meet the Company's requirements. Tr. 14-16; Exh. BG-1, pp. 4-5. Accordingly, the Company next issued two broad solicitations of interest and then a more formal RFP.

The Company's solicitations of interest were issued to ten parties that included suppliers and other local distribution companies. Exh. BG-5. The RFP was eventually issued to seven parties that expressed interest and four parties submitted a total of 11 proposals. Proposals were received from gas suppliers and a liquefied natural gas service provider. Exh. Exh. BG-9.[2] The Company evaluated these proposals pursuant to an analysis of price and non-price terms, including the consideration of factors such as reliability, flexibility, diversity and stability. Tr. 12-13; Exh. DTE 1-11; Exh. BG-1, pp. 10-12.

The Company's analysis determined that the Sales Agreement, in conjunction with the ConneXion Project, was the optimal resource for addressing at least part of the

[2] Specific proposals were received from Amerada Hess Corporation, Sprague Energy Corp., Distrigas of Massachusetts LLC and Coral Energy Resources L.P. Exh. BG-9.

Company's identified resource need. As to price, the Coral resource reflected market prices and was comparable to other alternatives which did not provide the same level of reliability in terms of meeting the Company's identified reliability need. Exh. BG-10; Exh. DTE 1-11. The Sales Agreement also would secure several non-price benefits including, principally, greater reliability because alternative bids relied upon secondary transportation rights. The Sales Agreement incorporated substantial flexibility, diversity and stability benefits that were appropriately considered in the bid evaluation process including a gas sellback feature and the potential assignment of Coral's ROFR rights to Tennessee capacity. Exh. BG-1, p. 12; Tr. 13; Exh. DTE 1-11. The Sales Agreement would add a meaningful measure of diversity and reduce the Company's dependence upon Gulf supply resources. Tr. 28. Accordingly, the Company elected to execute the Sales Agreement and seek Department approval of such arrangement.

The Company demonstrated that the resource evaluation and RFP processes were fair, open and transparent. Moreover, the Company demonstrated that the RFP portion of its resource review process was similar to the process approved in recent proceedings. See, e.g., Berkshire Gas, D.T.E. 05-58, p. 7 (2006), The Berkshire Gas Company, D.T.E. 04-47, pp. 2-4 (2004); The Berkshire Gas Company, D.T.E. 02-81, pp. 3-4 (2003); The Berkshire Gas Company, D.T.E. 02-56, pp. 6-9 (2002); The Berkshire Gas Company, D.T.E. 02-19, p. 11 (2002); The Berkshire Gas Company, D.T.E. 01-41, p. 14 (2001); The Berkshire Gas Company, D.T.E. 99-81, pp. 3-5 (1999). The bidding and evaluation process and the fact that the Company might elect not to select any of the bids received pursuant to the RFP was clearly described to each bidder. Exh. BG-8, p. 7. A wide range of potential bidders was solicited with respect to their interest in receiving the RFP. Exh. BG-5. Potential bidders were afforded the opportunity to ask questions with respect to the solicitation and no questions were received. Exh. BG-8, p. 5; Tr. 12. Bids in response to the RFP were evaluated based upon appropriate criteria that included price and non-price factors. Exh. AG 1-11. No bidder objected to the process or asserted that it was unfairly excluded from consideration or that its bid was unfairly evaluated. Tr. 12. Bidders were aware that the Company was considering a wide range of potential alternatives and the benefits available pursuant to a year round resource were not a precluding factor. Exh. BG-5; Exh. BG-6. In terms of price, the Sales Agreement was the most economic alternative that would complement the ConneXion Project in terms of addressing the identified reliability need. The Company also appropriately considered the non-price benefits such as reliability, flexibility, stability and diversity in selecting the Sales Agreement. In sum, Berkshire ultimately demonstrated that the Sales Agreement compared favorably to the options available for the Company and its customers. Accordingly, the Department should find that the resource selection process that included the RFP process was open, fair and transparent and approve the Company's resource selection process as appropriately conducted.

B. Sales Agreement

Berkshire demonstrated that the Sales Agreement is in the public interest because it contributes to a least-cost resource portfolio consistent with Berkshire's portfolio objectives, including the need to provide reliable service during peak periods. First, Berkshire demonstrated that securing a replacement source for the AFPA that is no longer available will enable the Company to continue to provide reliability benefits to its customers pursuant to a least-cost and more diversified resource portfolio. Exh. DTE 1-1. Berkshire's most recent Forecast and Supply Plan submitted to the Department in docket D.T.E. 05-7 and its approved petition in D.T.E. 05-58 reflected the need to address the unavailability of the AFPA resource in order to maintain reliable service. Exh. BG-1, p.5; Exh. DTE 1-1. This case involves identical concerns to those addressed in Berkshire Gas D.T.E. 05-58, p. 7. The Sales Agreement contributes to the Company's ability to satisfy its various planning standards including the peak day. Exh. DTE 1-1. In addition, by securing an additional gas supply from Canada, Berkshire explained that it expects to enhance cost, diversity and stability attributes of its resource portfolio. The Sales Agreement is not only a reliable, least-cost resource but includes terms that enable the Company to ratchet down cost for the benefit of customers such as the mandatory sellback feature and the potential ROFR assignment (or discount if the ROFR rights are not ultimately assigned). Exh. DTE 1-13.

The Company's analysis demonstrates that the Sales Agreement contributes to a reliable, least-cost resource portfolio and is consistent with the Company's portfolio objectives. Therefore, the Company submits that the Department should find that the Sales Agreement is consistent with the Company's portfolio objectives as set forth in Commonwealth Gas Company, D.P.U. 94-174-A (1996) and specifically and recently articulated in Berkshire Gas, D.T.E. 05-58.

V. CONCLUSION

Berkshire has demonstrated that the execution of the Sales Agreement is consistent with the public interest in that the Coral supply resource is consistent with Berkshire's portfolio objectives and compares favorably to the range of alternative options reasonably available to the Company and its customers. Accordingly, the Department should approve the Sales Agreement and take such other action as may be necessary and appropriate.

Respectfully submitted,

THE BERKSHIRE GAS COMPANY

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